

REMARKS

I. Summary of the Office Action

Claims 108-119 are pending in the application.

Claims 108-110, 112, and 114 are rejected under 35 U.S.C. § 102(e) as being anticipated by Bolduc et al. U.S. Patent No. 6,193,734 (hereinafter "Bolduc").

Claims 108-110, 112, and 114 are also rejected under 35 U.S.C. § 102(e) as being anticipated by Sideris U.S. Patent No. 5,433,727 (hereinafter "Sideris").

Claims 111 and 113 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sideris.

Applicants believe that claims 115-119 are mistakenly withdrawn from consideration as being directed to a non-elected invention. Applicants respectfully request consideration and rejoinder of these claims.¹

The rejection of applicants' claims are respectfully traversed.

¹ Applicants believe that the May 25, 2006 Office Action Summary incorrectly listed claims 115-142 as withdrawn from consideration when, in fact, only claim 120-142 were withdrawn, as stated on page 4 of that Office Action. Although the Office Action Summary in this Office Action states that claims 115-119 are withdrawn, applicants submit that these claims should not be withdrawn because they are properly dependent from claim 108. See also applicants' August 25, 2006 Reply to Final Office Action, page 2, fn. 1.

II. The 35 U.S.C. § 102 Rejection over Bolduc

The Examiner rejected claims 108-110, 112, and 114 under 35 U.S.C. § 102(e) as being anticipated by Bolduc. See Office Action, pages 3-4. Applicants respectfully traverse the rejection and submit that none of applicants' pending claims are unpatentable over Bolduc.

Applicants' invention, as recited by independent claim 108, relates to a device for use in closing septal defects. A medial portion of the device has a longitudinal axis. First and second sets of fingers that are capable of extending substantially radially outward from the axis are mounted on the media portion. The first and second sets of fingers are unconnected to each other at the radially outward ends and are spaced an axial distance apart from one another. Only one set of fingers is covered by a web of material between adjacent ones of the fingers.

Bolduc refers to a system for anastomosing a first hollow tissue structure (e.g., a first blood vessel) to a second hollow tissue structure (e.g., a second blood vessel). See Bolduc, Abstract. As shown in Bolduc's FIGS. 24-26, anastomosis is performed by ejecting a plurality of hooks 80 through openings in hub 54. See Bolduc, col. 10, 11. 9-30. Hooks 80 have sharpened ends 84 that bend down and securely engage the exterior wall of the second tissue structure. See Bolduc, col. 11, 11. 25-41. Hooks 80 also have U-shaped closed ends 82 that are positioned to engage

the interior wall of the second tissue structure. See Bolduc, col. 10, ll. 9-30. The central opening of hub 54 receives the end of the first tissue structure, creating a secure connection between the first and second tissue structures. See Bolduc, col. 9, ll. 55-63.

Although Bolduc describes hooks with sharpened and closed ends passing through openings in a hub, Bolduc does not show or suggest two sets of fingers mounted on a medial portion, as recited by applicants' independent claim 108. Rather, Bolduc shows a single set of hooks passing through a hub. See Bolduc, FIGS. 24, 25, 27, and 28. The two ends of Bolduc's hooks cannot be considered two sets of fingers; rather they both form part of hooks 80.

In addition, the two ends of Bolduc's hooks are not "spaced an axial distance apart from each other" on an axis, as also recited by applicants' independent claim 108. Rather, the two ends of Bolduc's hooks (i.e., the two sets of fingers, according to the Office Action) merely pass through openings in hub 54 and are not spaced any distance apart on any axis because they are both part of the same hooks 80. See Bolduc, col. 10, ll. 9-30.

Finally, Bolduc also does not show or suggest a "web of material between adjacent ones of fingers" on only one set of fingers, as also recited by applicants' independent claim 108. The Office Action contends that hub 54 or the end of the first tissue structure E can be

considered a web of material between adjacent ones of fingers. See Office Action, p. 3. Applicants respectfully disagree.

As described above, Bolduc's hooks are ejected through openings in hub 54. See Bolduc, col. 10, ll. 9-30. Hub 54 does not cover the ends of any of Bolduc's hooks, nor can hub 54 be considered a web of material between adjacent ones of fingers. Tissue structure E also does not meet this claimed feature. The end of the first tissue structure E is not even part of Bolduc's anastomosis device, but rather is part of the blood vessels. See Bolduc, FIG. 25. Like hub 54, the end of the first tissue structure E does not cover any fingers and cannot be considered a web of material between adjacent ones of fingers.

For at least the foregoing reasons, applicants submit that independent claim 108 is patentable over Bolduc. Applicants respectfully request, therefore, that the rejection of independent claim 108 under 35 U.S.C. § 102(e) over Bolduc be withdrawn. Dependent claims 109, 110, 112, and 114 contain all the limitations of independent base claim 108. Applicants respectfully request, therefore, that the rejection of these claims also be withdrawn.

III. The 35 U.S.C. § 102 Rejection over Sideris

The Examiner also rejected claims 108-110, 112, and 114 under 35 U.S.C. § 102 as being anticipated by Sideris. See Office Action, pages 3-4. Applicants respectfully traverse the rejection and submit that none of applicants' pending claims are unpatentable over Sideris.

Sideris refers to a device for the occlusion of large heart defects. See Sideris, Abstract. As shown in FIG. 1, occluder 11 of a center button device 10 is connected to button loop 12. See Sideris FIG. 1, 2, and 4; col. 4, ll. 20-23. The occluder is made of foam lining 16, and wire skeleton 18 is stitched into the lining in an X shape. See Sideris, col. 4, ll. 24-30. Counter-occluder wires 14 are sutured to wire skeleton 18. See Sideris, col. 4, ll. 43-50.

The Office Action contends that Sideris' wire skeleton 18 and counter-occluder wires 14 are two sets of fingers "capable of extending substantially radially outward" from a longitudinal axis and "spaced an axial distance apart from each other," as recited by applicants' independent claim 108. See Office Action, p. 4. Applicants respectfully disagree.

As described above, Sideris' counter-occluder wires 14 are connected to wire skeleton 18. Neither of these wires can extend radially outward from the longitudinal axis of the button loop. Moreover, the two

sets of wires are not "spaced an axial distance apart from each other on the axis," as also recited by applicants' independent claim 108. In addition, counter-occluder wires 14 are not even "mounted on the medial portion" (i.e., button loop 12). Rather, counter-occluder wires 14 are connected to wire skeleton 18 and latex piece 28. See Sideris, col. 4, ll. 43-56.

For at least the foregoing reasons, applicants submit that independent claim 108 is patentable over Sideris. Applicants respectfully request, therefore, that the rejection of independent claim 108 under 35 U.S.C. § 102 over Sideris be withdrawn. Dependent claims 109, 110, 112, and 114 contain all the limitations of independent base claim 108. Applicants respectfully request, therefore, that the rejection of these claims also be withdrawn.

IV. The 35 U.S.C. § 103 Rejection

Dependent claims 111 and 113, which include all of the limitations of independent claim 108, are allowable for at least the same reasons as independent claim 108. Accordingly, applicants respectfully request the rejection of claims 111 and 113 under 35 U.S.C. § 103 be withdrawn.

V. Conclusion

In view of the foregoing, claims 108-114 are allowable over the prior art of record. This application is therefore in condition for allowance. Reconsideration, rejoinder of claims 115-119, and allowance are respectfully requested.

Respectfully submitted,



Brian E. Mack
Registration No. 57,189
Agent for Applicants
FISH & NEAVE IP GROUP
ROPES & GRAY LLP
Customer No. 1473
1211 Avenue of the Americas
New York, New York 10036
Tel.: (212) 596-9000